



## DoD INSTRUCTION 5505.15

### DoD CONTRACTOR DISCLOSURE PROGRAM

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<b>Originating Component:</b>	Office of Inspector General of the Department of Defense
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<b>Approved by:</b>	Sean W. O'Donnell, Acting Inspector General of the Department of Defense

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**Purpose:** In accordance with the authority in DoD Directive (DoDD) 5106.01, the Inspector General (IG) Act of 1978, as amended, in the Appendix of Title 5, United States Code (U.S.C.), and DoD Instruction (DoDI) 7050.01, this issuance establishes policies and assigns responsibilities for receiving, reporting and investigating contractor disclosures for violations of:

- Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18, U.S.C.
- A violation of Sections 3729 through 3733 of Title 31, U.S.C., also known and referred to in this issuance as the "False Claims Act," in connection with the award, performance, or closeout of any contract or subcontract.

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## **SECTION 1: GENERAL ISSUANCE INFORMATION**

### **1.1. APPLICABILITY.**

This issuance applies to OSD, the Military Departments (including the Coast Guard at all times, including when it is a Service in the Department of Homeland Security by agreement with that Department), the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of Inspector General of the Department of Defense (IG DoD), the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (referred to collectively in this issuance as the “DoD Components”).

### **1.2. POLICY.**

a. All contractor disclosures made pursuant to Paragraphs 1.2.a.(1) through 1.2.a.(3) will be reported to the IG DoD, in accordance with the Federal Acquisition Regulation (FAR) and Subpart 203.1003(b) of the Defense Federal Acquisition Regulation Supplement (DFARS), as applicable:

(1) The provisions in the Subpart 3.10. of the FAR, for the establishment of contractor codes of business ethics and conduct.

(2) Subpart 9.4. of the FAR, governing the debarment and suspension of contractors.

(3) Clause 52.203-13 of the FAR, the Contractor Code of Business Ethics and Conduct.

b. A referral for investigation of a contractor disclosure to a Component or Defense Criminal Investigative Organization (DCIO) Hotline Coordinator by the IG DoD will be considered a referral as provided for in DoDD 5106.01 and DoDI 7050.01.

## SECTION 2: RESPONSIBILITIES

### 2.1. IG DOD.

In addition to the responsibilities in Paragraphs 2.4. and 2.5., the IG DoD:

a. Manages the DoD Contractor Disclosure Program and develops policies and procedures to receive contractor disclosures from DoD employees, contractors, and subcontractors.

b. Receives all contractor disclosures in accordance with Clause 52.203-13(b)(3)(i) of the FAR and Subpart 203.1003(b) of the DFARS, as applicable, as the “agency office of the Inspector General.”

c. Promptly notifies the Criminal Division and Civil Division of the Department of Justice and affected DoD Components, as appropriate, upon receipt of a contractor disclosure matter, and periodically discusses with these organizations the status of outstanding disclosures.

d. Notifies the respective DoD Intelligence Component’s IG upon receipt of non-frivolous allegations of contractor disclosure matters relating to fraud, bribery, conflict of interest, gratuity violations, or violations of the False Claims Act involving its agency; coordinates investigative activities with that IG to avoid duplication; and periodically discusses the status of such matters.

e. Refers contractor disclosures determined to be of a criminal nature to the appropriate DCIO for investigation.

f. Conducts annual reviews of DCIO investigative activities to ensure timely investigations of contractor disclosure matters referred to those organizations.

g. Refers non-criminal contractor disclosures to the affected DoD Component, after coordination with the Department of Justice Criminal Division and Civil Division.

h. Coordinates remedies proposed by DoD Component suspension and debarment authorities with DCIOs to ensure the proposed remedies do not impact ongoing investigations, in accordance with DoDI 7050.05.

i. Safeguards and treats information obtained pursuant to the contractor’s disclosure as confidential, as appropriate, including where the information has been marked “confidential,” “proprietary,” or similarly by the company.

(1) To the extent required or permitted by law and regulation, such information will not be released by the U.S. Government to the public pursuant to a request made in accordance with Section 522 of Title 5, U.S.C., also known as the “Freedom of Information Act,” without prior notification to the contractor and in accordance with DoD Manual 5400.07.

(2) The U.S. Government may transfer documents provided by the contractor to any department or agency within the Executive Branch if the information relates to matters within the organization’s jurisdiction.

## **2.2. UNDER SECRETARY OF DEFENSE FOR ACQUISITION AND SUSTAINMENT.**

The Under Secretary of Defense for Acquisition and Sustainment establishes guidelines to ensure that contractor disclosures are promptly forwarded to the IG DoD.

## **2.3. DIRECTOR, DEFENSE CONTRACT AUDIT AGENCY (DCAA).**

Under the authority, direction, and control of the Under Secretary of the Defense (Comptroller) /Chief Financial Officer, Department of Defense, the Director, DCAA:

- a. Establishes procedures to ensure any contractor disclosure received directly from a contractor is immediately forwarded to the IG DoD.
- b. Provides audit support to contracting officers, the IG DoD, and the DCIOs in accordance with the DCAA Contract Audit Manual 7640.1.

## **2.4. DOD COMPONENT HEADS, EXCLUDING THE DIRECTOR, DCAA.**

The DoD Component heads, excluding the Director, DCAA, establish procedures to:

- a. Require that acquisition officials and contracting officers immediately forward to the IG DoD, in accordance with Subpart 3.10, Section 3.1003(b) of the FAR and Subpart 203.1003(b) of the DFARS, as applicable, and inform the relevant DoD Intelligence Component IG for situational awareness, when applicable, any possible contractor violation of:
  - (1) Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18, U.S.C.; or
  - (2) The False Claims Act.
- b. Reference Clause 252.203-7003 of the DFARS in all solicitations and contracts in accordance with Clause 52.203-13(b)(3)(i) of the FAR or Subpart 203.1003(b) of the DFARS.
- c. Assess contractor disclosures to determine whether administrative remedies are necessary. DoD Component heads will decide to take action following coordination with affected DoD Components, components' IGs, and the servicing DCIO.

## **2.5. DOD COMPONENT HEADS, EXCLUDING THE DOD INTELLIGENCE COMPONENT HEADS AND DIRECTOR, DCAA.**

In addition to the responsibilities in Paragraph 2.4., the DoD Component heads, excluding the DoD Intelligence Component heads and Director, DCAA, establish procedures to provide the IG DoD a copy of the hotline completion report of all actions taken as a result of an investigation or inquiry subsequent to an action referral from the DoD Hotline.

## **2.6. DOD INTELLIGENCE COMPONENT IGS.**

The DoD Intelligence Component IGS will establish procedures to:

- a. Notify the IG DoD of any non-frivolous allegations reported by a contractor concerning fraud, bribery, conflict of interest, or gratuity violations and violations of the False Claims Act, unless the IG DoD and a DoD Intelligence Component's IG agree on categories of disclosures that do not require notification.
- b. Notify the DoD Hotline if the DoD Intelligence Component IG believes an investigation or inquiry is not warranted or practicable in response to an action referral, or a response is not warranted or practicable to an action referral, and coordinate with the DoD Hotline to determine the appropriate course of action.
- c. Provide the IG DoD a copy of the hotline completion report or other reporting format as agreed on by the IG DoD and the DoD Intelligence Component IG, and the results of actions taken by the DoD Intelligence Component IG in response to an action referral from the DoD Hotline, including administrative remedies taken by the DoD Intelligence Component head. Coordinate with the DoD Hotline to determine the appropriate course of action for any case the DoD Hotline review determines requires further action.

## **2.7. SECRETARIES OF THE MILITARY DEPARTMENTS AND THE COMMANDANT OF THE U.S. COAST GUARD.**

In addition to the responsibilities in Paragraphs 2.4. and 2.5., the Secretaries of the Military Departments and the Commandant of the U.S. Coast Guard:

- a. Ensure that their respective DCIOs:
  - (1) Thoroughly and in a timely fashion, adhere to established procedures to evaluate allegations of fraud, criminal matters, or violations found in Title 18, U.S.C., or the False Claims Act, arising from contractor disclosures that involve programs, persons, and organizations affiliated or conducting business with the DoD.
  - (2) Investigate allegations in accordance with DoDD 5106.01 and DoDI 5505.02 when indicated.
- b. Establish procedures within their Military Service to resolve, through administrative remedies, contractor disclosures when DCIOs determine the matter does not fall within their investigative jurisdiction.
- c. Establish procedures to ensure DCIOs provide the IG DoD a copy of the hotline completion report of all actions taken as a result of an investigation or inquiry.
- d. Establish procedures within their Military Service to ensure DCIOs report information of potential insider threats involving contractors to their appropriate DoD Component counter insider threat program office in accordance with DoDD 5205.16.

## GLOSSARY

### G.1. ACRONYMS.

ACRONYM	MEANING
DCAA	Defense Contract Audit Agency
DCIO	Defense Criminal Investigative Organization
DFARS	Defense Federal Acquisition Regulation Supplement
DoDD	DoD directive
DoDI	DoD instruction
FAR	Federal Acquisition Regulation
IG	inspector general
IG DoD	Inspector General of the Department of Defense
U.S.C.	United States Code

### G.2. DEFINITIONS.

Unless otherwise noted, these terms and their definitions are for the purpose of this issuance.

TERM	DEFINITION
<b>action referral</b>	A referral for action as defined in DoDI 7050.01.
<b>contractor disclosure</b>	A written disclosure by a DoD contractor or subcontractor to the IG DoD of the existence of credible evidence that the contractor or subcontractor has committed a violation of Title 18, U.S.C., or the False Claims Act, in connection with the award, performance, or closeout of a contract or any subcontract thereunder.
<b>DCIOs</b>	The United States Army Criminal Investigation Command, Naval Criminal Investigative Service, Air Force Office of Special Investigations, and the Defense Criminal Investigative Service.
<b>DoD Intelligence Components</b>	Pursuant to Sections 2, 8G, and 12 of the IG Act of 1978, as amended, the DoD Intelligence Components consist of the: <ul style="list-style-type: none"> <li>• National Security Agency</li> <li>• National Reconnaissance Office</li> <li>• Defense Intelligence Agency</li> <li>• National Geospatial-Intelligence Agency</li> </ul>

## **REFERENCES**

Code of Federal Regulations, Title 48, Part 52, Subpart 203-13  
Defense Contract Audit Agency Contract Audit Manual 7640.1, current edition  
Defense Federal Acquisition Regulation Supplement, current edition  
DoD Directive 5106.01, “Inspector General of the Department of Defense (IG DoD),”  
April 20, 2012, as amended  
DoD Directive 5205.16, “The DoD Insider Threat Program,” September 30, 2014, as amended  
DoD Instruction 5505.02, “Criminal Investigations of Fraud Offenses,” August 29, 2013,  
as amended  
DoD Instruction 7050.01, “DoD Hotline Program,” October 17, 2017  
DoD Instruction 7050.05, “Coordination of Remedies for Fraud and Corruption Related to  
Procurement Activities,” May 12, 2014, as amended  
DoD Manual 5400.07, “DoD Freedom of Information Act (FOIA) Program,” January 25, 2017  
Federal Acquisition Regulation, current edition  
United States Code, Title 5  
United States Code, Title 18  
United States Code, Title 31